

must take action to reduce to the greatest extent practicable, the likelihood of unsafe drivers being allowed to operate CMVs on public roads.

With the publication of the July 31, 2002, final rule, all CDL holders should now be aware that a conviction for DUI while operating a non-CMV could have a significant adverse impact on their driving careers. These drivers have a choice between sharing the road responsibly with other motorists at all times, regardless of the type of vehicle being operated, or engaging in unsafe driving practices with the potential of being subjected to enforcement actions and ultimately disqualification. The agency's decision represents an appropriate use of its statutory authority, and will help to ensure national uniformity and consistency in the administration of the CDL program.

Issue 2: Less Stringent Penalties for Foreign-Domiciled Drivers

The Petitioners argued that the penalties discriminate against U.S. drivers because foreign drivers' CDLs are not subject to suspension, cancellation or revocation for the same offenses in non-CMV. They believe that convictions for non-CMV offenses must be enforced in a non-discriminatory manner against all drivers operating on U.S. highways.

FMCSA Response: The FMCSA denies the Petitioners' request because all CDL holders, including foreign domiciled drivers, operating in the U.S. are held to the same standard for offenses committed in the U.S. The agency recognizes that the July 31, 2002, final rule leaves unresolved differences between the consequences for a U.S. driver convicted of a disqualifying offense in a non-CMV, and a foreign domiciled driver who commits similar offenses in his/her country of domicile. However, this is an issue that cannot be resolved through the rulemaking process because it involves offenses in countries that have not adopted laws to disqualify commercial drivers for offenses committed in private vehicles. As indicated in the preamble of the July 31, 2002, final rule, the FMCSA will initiate discussions with Mexico and Canada to modify existing CDL reciprocity agreements to include non-CMV convictions for offenses committed in the drivers' country of domicile.

The FMCSA urges all States to implement the disqualification standards adopted on July 31, 2002, and corrected by today's final rule, because doing so is necessary to safeguard the motoring public. Implementation of the disqualification standards should not be

delayed because of concerns about the status of reciprocity negotiations between the U.S., Canada and Mexico. The governments of Canada and Mexico share our commitment to ensuring the safety of cross-border motor carrier operations, and we expect to complete appropriate reciprocity agreements.

Issue 3: Inconsistency Between the Regulatory Language and MCSIA

The Petitioners stated that MCSIA provides for disqualification based on a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license. However, the rule adopted by the FMCSA does not include the limiting language concerning the revocation, cancellation, or suspension of the license by the State. The Petitioners argue that rule must be amended to make it consistent with MCSIA.

FMCSA Response: The FMCSA agrees with the Petitioners that a CDL driver may only be disqualified for offenses committed while operating a non-CMV if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license. The preamble to the 2002 final rule includes a discussion that explicitly acknowledges that offenses are not disqualifying unless the State also finds that the circumstances of the offense warrant revocation, cancellation, or suspension. However, Table 2 to § 383.51 does not include the required reference to revocation, cancellation, or suspension. Therefore, the agency is revising Table 2 to include the required reference to revocation, cancellation, or suspension.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA)(5 U.S.C. 553(b)) an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. In this case, additional notice and comment are unnecessary. This final rule makes a technical correction to the FMCSA's July 31, 2002, final rule concerning disqualifying offenses committed by CDL holders while operating non-CMV. This correction is necessary to make the regulatory language in Table 2 of § 383.51 consistent with section 201(b) of MCSIA. The agency requested public comment in response to its May 4, 2001, notice of proposed rulemaking, and intended to adopt the necessary regulatory language on July 31, 2002. However, certain regulatory text was omitted, and the agency must now

correct that error. Therefore, the FMCSA finds good cause to adopt this final rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)].

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3) that there is good cause for making the rule effective upon publication. The final rule is a technical correction to Table 2 of § 383.51 to make the regulations consistent with MCSIA. Therefore, good cause exists under 5 U.S.C. 553(d) to dispense with the 30-day delay in the effective date requirement and the FMCSA is making the rule effective upon publication in the **Federal Register**. The final rule does not change the substance of the requirements.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. Although the July 2002 final rule establishing the current requirements was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget does not consider this amendment of the final rule to be a significant action.

Regulatory Flexibility Act

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The original rule did not have a significant effect on a substantial number of small entities, and this rule simply amends Table 2 to § 383.51 to reflect the statutory language in the MCSIA.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*) that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of